

BARBARA C. HARRIS
Office of the Montana State Auditor
Commissioner of Securities and Insurance (CSI)
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF) CSI Case Number: INS-2016-59
)
JOHN DeROSE,) **NOTICE OF PROPOSED AGENCY**
) **ACTION AND OPPORTUNITY FOR**
) **HEARING**
)
Respondent.)

TO: JOHN DEROSE
HARTAN BROKERAGE
33 West 60th Street, #6
New York, NY 10023

PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Montana Insurance Code (Mont. Code Ann. § 33-1-101 et seq.), is proposing that the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner) take disciplinary action against the insurance producer license of John DeRose (Respondent). Specifically, the CSI is proposing that the Commissioner order a fine of up to \$5,000 per violation of the Montana Insurance Code pursuant to § 33-1-317.

JURISDICTION

The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-1-317, 33-17-201, and 33-17-1001.

RELEVANT FACTS

Investigation has revealed the following relevant facts:

1. The CSI reviewed a "Montana Surplus Lines Submission Form" signed by Collection Bureau Services, Inc. employee Jennifer Whipple on December 1, 2015. That form and additional documents show that Respondent was involved in transactions resulting in the sale of an insurance policy for Collection Bureau Services, Inc. in Missoula, Montana. An invoice issued by SHBG Insurance Services dated November 30, 2015, charged \$23,060.00 for "E&O" coverage from December 1, 2015, to December 1, 2016, (policy number EO861966) of Collection Bureau Services, Inc. The policy is a surplus lines policy. An illegal "Agency Fee" of \$250 was also charged by SHBG Insurance Services.

2. Respondent was working at Hartan Brokerage, Inc. at the time this policy was solicited and sold in Montana. Respondent, while so employed, communicated with Whipple, and John DeMaria, an employee or agent of SHBG Insurance Services. Respondent suggested the use of an improper form for the type of policy needed by the insured.

3. The policy was put in place and bound by Evanston Insurance Company, a fact confirmed in writing in a memorandum dated November 30, 2015, from Brittany

Kelly, Regional UW Assistant at Markel International Insurance Company Limited, to Respondent.

4. While Evanston Insurance Company is licensed as a surplus lines insurance producer in Montana, John DeMaria, SHBG Insurance Services, Respondent, and Hartan Brokerage, Inc. are not. Any assertion asserted that Ed Pray with Hartan Brokerage is licensed as an insurance producer in Montana does not protect Respondent from responsibility regarding the above actions. Pray had no personal part in the transactions involving this insurance policy. Also, he is not licensed as a surplus lines producer in Montana.

APPLICABLE LAW

1. Montana law provides that the Commissioner is to conduct various investigations and actions to detect, address, and prevent insurance fraud, including insurance fraud by insurance producers (any person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance). The Commissioner's duties in this regard include the protection of the public and other persons engaged in the insurance business from illegal practices (practices that are prohibited by Titles 33 and 45, Mont. Code Ann.). Mont. Code Ann. §§ 33-1-1201 through 33-1-1211. *See also* Mont. Code Ann. § 33-1-311.

2. Montana law provides that any person selling, soliciting, or negotiating property or casualty insurance in Montana must be licensed (or fit into some category of exception). Mont. Code Ann. §§ 33-2-101, 33-2-301(3)(p), 33-2-305. No exceptions apply in this case.

3. Montana law provides that the Commissioner may impose a fine upon any person who has violated a provision of Title 33, Montana Code Annotated, including violation of the above statutes requiring a license to sell, solicit, or negotiate property or casualty insurance in Montana. Mont. Code Ann. § 33-1-317.

4. Montana law provides:

Hearings -- discretion -- written demand -- procedure. (1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary. Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person's request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule.

Mont. Code Ann. § 33-1-701.

ALLEGATIONS AND RELIEF REQUESTED BY CSI

Based on the foregoing, the CSI alleges that the acts of the Respondent in soliciting, selling, or assisting those actions in Montana while he held no license to conduct that insurance business are violative of Montana law. Mont. Code Ann. §§ 33-2-101, 33-2-301(3)(p), 33-2-305.

The CSI seeks the following:

1. Payment of a fine of up to \$5,000 per occurrence pursuant to Montana Code Annotated Section 33-10-317; and

3. Any other relief deemed just and proper.

STATEMENT OF RIGHTS OF RESPONDENT

1. You are entitled to a hearing to respond to this Notice, present evidence, and present arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act, § 2-4-601 et seq. **if you notify Barbara C. Harris, attorney for the CSI, as set out below.**

2. **To obtain a hearing, you must provide a written demand for a formal hearing to:** Barbara C. Harris, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. As stated in § 33-1-701, "A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing."

3. **Your written demand for a formal hearing must be received by Barbara C. Harris on or before June 16, 2016. Failure to make written demand for a formal hearing will result in the entry of a default order by the Commissioner ordering the actions requested above. THIS WILL HAPPEN WITHOUT ANY ADDITIONAL NOTICE TO YOU IF YOU DO NOT MAKE WRITTEN DEMAND AS SET OUT ABOVE.** Administrative Rule of Montana 1.3.214.

4. You have the right to be represented by an attorney at any and all stages of this proceeding. Any such attorney must be admitted to practice law in Montana pursuant to the applicable rules of the State Bar of Montana and the Montana Supreme Court.

DATED this 23rd day of May, 2016.



BARBARA C. HARRIS

Attorney for CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of May, 2016, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

John DeRose
Hartan Brokerage
33 West 60th Street, #6
New York, NY 10023

